

PT 01-55

Tax Type: Property Tax

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

MARIANJOY, INC.
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 00-PT-0049
(99-101-162)
P.I.N.: 171B404

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Ms. Kristina E. Somers and Mr. Steven J. Teplinsky of Michael Best & Friedrich, LLC on behalf of Marionjoy, Inc. (hereinafter the “applicant”)

SYNOPSIS: This proceeding raises the following issues: first, whether real estate identified by Winnebago County Parcel Index Number 171B404 (hereinafter the “subject property”) was owned by a duly qualified “institution of public charity,” as required by Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-3 *et seq.* (hereinafter the “Code”); and second, whether the subject property was “exclusively used for charitable or beneficent purposes ...,” as required by Section 15-65(a), during any part of the 1999 assessment year. The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Winnebago County Board of Review (hereinafter the “Board”) on November 22, 1999. The Board reviewed the Application and recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the requested exemption be denied on grounds that:

(1) there existed a question as to whether applicant in fact owned the subject property during the tax year in question; and, (2) applicant presented insufficient evidence to establish the “level of notice to the community as to available charity for those in need.” [sic]. Dept. Ex. No. 1.

The Department accepted the Board’s recommendation by means of a determination, dated March 16, 2000, which found that the subject property was not in exempt ownership and not in exempt use. Applicant filed a timely appeal to this determination and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department’s determination be modified to reflect that applicant receive: (1) a 1/3 exemption for the period January 1, 1999 through January 28, 1999; and, (2) a 100% exemption for the period January 29, 1999 through December 31, 1999.

FINDINGS OF FACT:

A. Preliminary Considerations

1. The Department's jurisdiction over this matter and its position herein are established by the admission of Dept. Ex. Nos. 1 and 2.
2. The Department’s position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 2.
3. The subject property is located at 6080 Elaine Drive, Rockford, IL and improved with a 9,668 square foot rehabilitational facility. Dept. Ex. No. 1; Applicant Ex. No. 3.

B. Applicant's Organizational Structure

4. Applicant is an Illinois Not For Profit Corporation organized for purposes of owning and maintaining various health care facilities. Applicant Ex. No. 6.
5. Applicant, the Debes Trust of July 31, 1975 (hereinafter “Debes”) and Swedish American Continuing Care, Inc., an Illinois business corporation (hereinafter “SACC”) were the only members of TriVenture Rehabilitation Services, LLC (hereinafter “Tri-Venture”) as of January 1, 1999. Applicant Ex. Nos. 9, 10; Tr. pp. 9-10.
6. Both Debes and SACC are for-profit entities. Tr. p. 10.
7. On January 29, 1999, the members of TriVenture approved and adopted an amendment to its operating agreement which provided, in substance, that: (a) applicant was to instantaneously purchase and retain the membership interests held by Debes and SACC in TriVenture; (b) the membership interests of Debes and SACC in TriVenture were to be extinguished immediately; and, (c) applicant was to become the sole surviving member of TriVenture. Applicant Ex. No. 20; Tr. pp. 12-13.
8. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination originally issued by the Internal Revenue Service on March 25, 1946. Applicant Ex. No. 12.
9. Applicant is exempt from Illinois Use and related Sales Taxes pursuant to a determination letter, finding that applicant “is organized and operated exclusively for charitable purposes,” issued by the Department on March 14, 1997. Applicant Ex. No. 8.

10. Applicant received a property tax exemption for that portion of real estate identified by DuPage County Parcel Index Number 06-22-300-011 which it used to provide various rehabilitation services¹ under the terms of the Department's determination in Docket No. 98-22-716. This exemption remained in full force and effect throughout the 1999 assessment year. Applicant Ex. No. 23-A; Administrative Notice; Tr. pp. 34-36.

C. Applicant's Programs

11. Applicant offers a variety of rehabilitational programs for persons who have suffered, strokes, pediatric disorders, spinal cord or brain injuries and chronic pain. Applicant Ex. No. 24.

12. Applicant makes all of its services available without regard for an individual's ability to pay and designates part of its budget to providing for those who require financial assistance. Applicant Ex. No. 13; Tr. p. 20.

13. Applicant provided \$220,410.00 in financial assistance during its 1999 fiscal year, which ran from July 1, 1998 through June 30, 1999. It provided an additional \$166,534.00 in financial assistance from July 1, 1999 through June 30, 2000. Applicant Ex. No. 21.

D. Ownership and Use of the Subject Property

14. TriVenture obtained ownership of the subject property by means of a trustee's deed dated July 25, 1996. Applicant Ex. No. 1; Tr. pp. 11.

1. Applicant admitted in its written exemption application for this property that it used only 80% of this property to provide such services. Accordingly, the Department awarded a partial exemption for the 80% it so used but determined that the remaining 20% was taxable because it was not in exempt use. Applicant Ex. No. 23A, 23B.

15. TriVenture never deeded the subject property to applicant after it obtained ownership thereof. TriVenture did, however, retain its ownership interest therein from the date of acquisition until it sold the subject property in June of 2000. Tr. pp. 8, 11-12.
16. The subject property was vacant at the time of acquisition but subsequently improved with a 9,668 square foot rehabilitational center that opened in 1997. Dept. Ex. No. 1; Tr. pp. 11-12.
17. Applicant operated the subject property as a rehabilitational facility, and used it to offer services that were identical to the ones that it provided at its DuPage County facility, throughout 1999. Tr. pp. 26-27, 35-36.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient warrant modification of the Department's initial determination in this matter. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, wherein all property owned by "institutions of public charity" is exempted from real estate taxation, provided that such property is "actually and exclusively used for charitable purposes and not leased or otherwise used with a view

to profit.” 35 ILCS 200/15-65(a). The statutory requirements for this exemption are that: (1) the property be owned by an entity that qualifies as an “institution of public charity;” and, (2) the property be actually and exclusively used for charitable purposes.” *Id.*; Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968). Both requirements are presently at issue, as the Department’s initial determination herein was predicated on lack of exempt ownership and lack of exempt use.

The determination as to lack of exempt ownership appears to be based on two related considerations, one being that applicant itself was not the nominal titleholder of the subject property during the tax year in question. However, it is well established that technical refinements of title are not determinative of ownership for property tax purposes. People v. Chicago Title and Trust, 75 Ill.2d 479 (1979); Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996). Consequently, the mere fact that nominal title was vested in an entity other than applicant is neither legally significant nor decisive herein.

What is significant, however, is that the nominal titleholder, TriVenture, LLC, was comprised of applicant and two for-profit entities, Debes and SAAC, until January 29, 1999. This factor could very well have lead the Department to conclude that the subject property was not in exempt ownership because it is elementary that all “institutions of public charity” do not have capital stock, shareholders or other indicia of for-profit enterprises. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968). Despite this, our Supreme Court has recognized that where ownership interests are divided among exempt and non-exempt entities, it is proper to award an exemption which corresponds to the percentage of the exempt entity’s ownership interest in the

property at issue. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996). (Awarding 50% exemption to an charitable institution which held an undivided 50% ownership interest in property used for charitable purposes).

The Department has recognized, through its determination in Docket No. 98-22-716, that this applicant qualifies as an “institution of public charity” for property tax purposes. Consequently, pursuant to Chicago Patrolmen's Association, I conclude that applicant’s 1/3 undivided interest in TriVenture is legally sufficient to establish that applicant should receive a 1/3 exemption for the 8% of the 1999 assessment year that transpired between January 1, 1999 and January 28, 1999, which was the date that immediately preceded the one on which applicant became the sole member of TriVenture.

The technically oriented holding in Chicago Patrolmen's Association does not apply to the balance of the 1999 assessment year because there were no for-profit members of TriVenture after January 28, 1999. Rather, applicant, which effectively assumed control of TriVenture by becoming the sole member thereof on January 29, 1999, was, practically speaking, the only entity which held any legally recognizable ownership interest in the subject property after that date. Accordingly, applicant should receive a 100% exemption for the 92% of the 1999 assessment year which transpired between January 29, 1999 and December 31, 1999.

In light of the above, it appears that the Department’s conclusions concerning lack of exempt use stem from the potential for commercial use associated with the ownership interests held by Debes and SAAC. Such concerns are ameliorated by application of the holding in Chicago Patrolmen's Association, *supra*, to the facts of this

case. Furthermore, it was the applicant, and only the applicant, that made any use of the subject property during 1999. Therefore, it is applicant's use that is determinative on the question of exempt use.

Applicant's uses of the subject property mirrored the ones for which it was granted a property tax exemption in Docket No. 98-22-716. Accordingly, such uses qualify as "exclusively charitable" within the meaning of Section 15-65 of the Property Tax Code. Therefore, that portion of the Department's determination which found that the subject property was not in exempt use throughout 1999 should be modified so that they are consistent with the conclusions reached above.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that the Department's initial determination in this matter, finding that real estate identified by Winnebago County Parcel Index Number 171B404 was not in exempt ownership and not in exempt use, as required by 35 ILCS 200/15-65, should be modified to reflect that:

- A. Applicant receive a 1/3 exemption for said property for that 8% of the 1999 assessment year which transpired between January 1, 1999 and January 28, 1999; but,
- B. Applicant receive a 100% exemption for said property for that 92% of the 1999 assessment year which transpired between January 29, 1999 and December 31, 1999.

September 17, 2001
Date

Alan I. Marcus
Administrative Law Judge